IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO. 370 OF 1998
IN
SUMMONS FOR JUDGMENT NO.614 OF 1996
IN
SUMMARY SUIT NO. 1030 OF 1996

Dalla Iqbal Haroon
of Mumbai Indian Inhabitant residing
at Akash Apartment, Flat No.1005,
Sane Guruji Marg, Agripada, Mumbai
400 011 and carrying on business at
C/o. M/s.Dalla Enterprises 411,
Sharda Chambers No.1, 31,
Keshavji Naik Road, Bhat Bazar,
Mumbai 400 009.

Appellant
(original Defendant)

versus

Bank of Baroda
a body corporate constituted under
the Banking Companies (Acquisition
and Transfer of Undertakings) Act,
1970 having its head office at
Mandvi-Baroda in the Gujarat State
and Central Credit Card Department
at Esperance, Shahid Bhagat Singh
Marg, Colaba, Mumbai 400 039.

Respondents
(original Plaintiffs)

Mr. V. J. Shah i/b. M/s. L. C. Tolat & Co. for
the appellant.

**CORAM : R. M. LODHA &**
**J.P. DEVADHAR,JJ**

**DATED : 19th August 2004**

**ORAL JUDGMENT (Per R.M. Lodha,J.)**

Heard Mr. V.J. Shah, the learned counsel for the

appellant and perused the impugned order.

2. The learned counsel for the appellant submitted that the appellant was able to show good defence in opposition to the summons for judgment and, therefore, the learned trial Judge ought to have been granted unconditional leave to the appellant to defend the suit. The learned counsel would submit that the sum of Rs.72,404.63 claimed by the plaintiff is without specific particulars. No account has been submitted. The appellant, according to the counsel, denied having used the subject credit card save and except once for withdrawal of the amount of Rs.10,000/-. No purchases were made by the appellant by using the subject credit card.

3. Having considered the submissions of the learned counsel for the appellant, we are of the view that the said submissions do not merit acceptance. According to the plaintiffs, the defendant-appellant used the subject credit card between 12th May 1992 and 3rd February 1994. The monthly bills/statements were forwarded to the defendant-appellant. The plaintiff made part payment of his dues from time to time and last payment of Rs.10,000/- was made by the defendant-appellant on 14th February, 1994 and thereafter no payment was made. After giving credit of the said amount on 1st March 1994

a sum of Rs.37,312.02 was due and payable by the defendant-appellant. As per the terms of contract, the service charge @ 2% per month was payable and upon credit limit exceeding Rs.10,000/-, additional service charge of 1% per month was leviable. On the date of the suit a sum of Rs.72,404.63 was due and payable by the defendant-appellant. Besides the bald statement by the defendant in reply affidavit that he did not use and utilise the subject credit card except withdrawing the sum of Rs.10,000/-, there is nothing on record that at any point of time the monthly bills/statements forwarded to the defendant-appellant were ever challenged by him.

4. In this view of the matter, the learned trial Judge cannot be said to have erred in holding that there was no legal, bonafide or good defence set up by the defendant-appellant. However, the learned trial Judge showed mercy and despite the fact that the defendant had not showed any defence, raising triable issue/s, he permitted the defendant-appellant to defend the suit on depositing a sum of Rs.40,000/- within the time granted in the order. We do not find any infirmity in the order warranting interference in the appeal.

5. Appeal is, accordingly, dismissed.

6. The time of four weeks is granted to the appellant

to deposit the sum of Rs.40,000/- as directed in the impugned order.

7. No costs.

**(R.M. LODHA, J.)**

**(J.P. DEVADHAR,J.)**